

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 471 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

MOHMAD @ MEHMUD KASAM DAMBHARIAS

Versus

JALAUDDIN HAJI ABDUL KADAR

Appearance:

MR PK JANI for Petitioner
NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 21/03/2000

ORAL JUDGEMENT

#. The petitioner is the tenant against whom the decree for eviction has been passed under section 13(1)(1) of the Bombay Rent Act by the Trial Court and confirmed by the Appellate Court.

#. The facts leading to the present petition are as under:

That the respondent herein is the original plaintiff who has filed Regular Civil Suit No. 269 of 1979 in the court of the learned Civil Judge (SD) at Navsari. The plaintiff is the owner of a house No. 72/1 in Ward No.9 in the Navsari City. That said premises was let to the defendant at a monthly rent of Rs. 15/- That the defendant was in arrears of rent. He was irregular in payment of rent. It was also stated by the plaintiff that the defendant is not using the property for the purpose for which it was let since last 6 months before the filing of the suit. It is also stated by the plaintiff that the defendant has constructed a house on municipal land at ward no.9 bearing Municipal House No. 74-C and that the said house is being occupied by the defendant and his family members since last two years. Therefore, aforesaid suit was filed for evicting the defendant from the suit property.

#. The defendant appeared in the suit and filed written statement at exh.10. He resisted the suit in toto. It was stated by the defendant that the new premises is not sufficient to accommodate all his family members.

#. The Trial Court framed various issues at exh.12.

#. After recording the evidence and after hearing the arguments of both the sides the Trial Court came to the conclusion that the defendant has acquired alternative accommodation which is suitable to him and as well as his family members. Therefore, on the ground of acquisition of suitable residence, the Trial Court decreed the suit of the plaintiff.

#. Aforesaid decree for possession was challenged by the defendant by filing Regular Civil Appeal No. 1 of 1982. The said Appeal was heard by the learned District Judge, Valsad at Navsari who by his judgment and order dated 27.1.1983 dismissed the appeal.

#. The defendant tenant has invoked the jurisdiction of this court under section 29(2) of the Bombay Rent Act by filing the present Revision Application.

#. At the time of hearing of this Revision Application Mr. P.K.Jani learned advocate for the petitioner has strenuously argued that the finding of the courts below to the effect that the defendant acquired suitable

accommodation is not correct. According to Mr. Jani looking to the size of the defendant's family it cannot be said that the newly constructed premises can accommodate all the family members and that since the defendant was finding it difficult to accommodate all of them in the rented premises, the newly constructed premises is nothing but an additional accommodation to accommodate all the family members.

#. According to Mr. Jani the Appellate Court has given more weight to the evidence of the plaintiff or his witnesses and brushed aside the evidence of the defendant and his witnesses. Mr. Jani has relied upon the judgment of this court reported in 16 GLR 991 in order to substantiate his say to the effect that if the tenant is finding it difficult to accommodate all the family members in the rented premises and in order to accommodate them if he has constructed additional accommodation, it cannot be said that he has acquired suitable alternative accommodation as contemplated under section 13(1)(1) of the Bombay Rent Act. Both the courts below have considered the topography of the rented premises as well as the newly acquired premises by the defendant. So far as the rented premises is concerned the size of the same is 18' x 18' and the total area would be 180 sq.ft. It is not in dispute that the defendant has constructed his own premises on the municipal land. According to the defendant it is not possible for the defendant to accommodate all his family members in the suit premises and therefore, he was compelled to construct additional accommodation. It is the say of the defendant that the newly constructed premises as such is an additional premises and not an alternative premises. It has come in evidence that all the family members of the defendant including the defendant have shifted to the new premises. It is not in dispute that the newly constructed premises is double in size as compared to the rented premises. It is also not in dispute that the newly constructed premises is more spacious compared to the rented premises and having more facility as compared to the rented premises especially when in the rented premises there is no electricity while in the newly constructed premises there is electric connection. Over and above the same, on appreciation of the evidence it has been found that the rented premises is kept closed and the presumption is that all the family members have also shifted in the newly constructed premises. However, the Appellate Court in para 10 of its judgment has observed that the defendant who was originally occupying the rented premises has shifted in the newly constructed premises and he is residing in the said premises. Considering the

evidence of some of the witnesses of the plaintiff, the Appellate Court has found that the rented premises in question is kept closed by the defendant. It is argued by Mr. Jani that the Courts below have committed an error in appreciating the evidence of the defendant properly and accepting the say of the plaintiff and his witnesses in this behalf. In my view, the lower Appellate Court is the final court for appreciation of evidence. This court while exercising revisional powers cannot reappreciate the evidence on record. Therefore, aforesaid finding of fact recorded by the Appellate Court that the defendant has kept the rented premises closed and has shifted his family members to the newly constructed premises cannot be in any any way said to be contrary to the evidence on record and that finding cannot be branded as a perverse finding. Having built up his own accommodation, the defendant should have vacated the suit premises. However, the defendant is keeping possession of the suit premises. It has been found by the Appellate Court that the defendant has got 7 children, 5 daughters and 2 sons. The Appellate Court further found that the daughters are likely to be married within a short time and naturally after the marriage they were to go to their in laws house. The Appellate Court further found that the newly constructed accommodation can accommodate all of them. The Trial Court as well as the Appellate Court has in great detail examined the evidence on record and has reached the conclusion that the defendant can accommodate all his family members including himself in the newly constructed premises. In that view of the matter, it cannot be said that the newly constructed premises is not sufficient which can accommodate all the family members of the defendant including the defendant and his wife. As per the evidence on record and considering the situation of both the premises, in my view the Appellate Court has not committed any error in dismissing the appeal of the defendant-tenant and the Appellate Court has rightly reached to the conclusion that the suit premises is sufficient to accommodate the defendant and his family and that the defendant has acquired alternative suitable accommodation. Thus the defendant is liable to be evicted under the provisions of section 13(1)(1) of the Bombay Rent Act.

##. The ratio laid down in 16 GLR 991(Supra) is therefore, not applicable to the facts of the present case. In that view of the matter, I do not find any substance in this revision application and the same is liable to be dismissed. The Revision Application is accordingly dismissed. Rule is discharged. Interim

relief granted earlier stands vacated forth with. No order as to costs.

##. At this stage Mr. Jani has requested the court to give sometime to finding out suitable alternative accommodation. However, looking to the finding given by the courts below the defendant has already acquired alternative suitable accommodation. However, relying upon the submission of Mr. Jani that today also the defendant is using the suit premises and looking to the fact that the Revision Application is of the year 1983 I grant time upto 31.10.2000 to the defendant to vacate the suit premises on his filing usual undertaking within 8 weeks from today. In the said undertaking the petitioner shall mention that he is in exclusive possession of the suit premises and that he will not transfer or alienate the suit property to any one and without obstructing in any manner he will hand over the vacant and peaceful possession to the respondent on or before 31.10.2000. The petitioner shall continue to pay mesne profit regularly during the aforesaid period. If the petitioner fails to file the undertaking within 8 weeks from today, or if the petitioner commits any breach or the said undertaking, it will be open for the landlord to execute the decree for possession forthwith.

Since the respondent-plaintiff is not appearing in the proceedings, the office is directed to send a copy of this order to the respondent-plaintiff as well as to the defendant-tenant.

(P.B.Majmudar.J)

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